

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

19/Reply
Brief
F. Walk
9-10-04

Inter Application of

Ralf Reimelt et al

Appln. No. : 09/899,502

Filed : July 6, 2000

For: APPARATUS FOR DETERMINING AND/OR
MONITORING THE FILLING LEVEL OF A
PRODUCT IN A CONTAINER

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OFFICE OF PETITIONS

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) Art Unit: 2856
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) Ex: R. Frank
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REPLY BRIEF ON APPEAL (3 COPIES)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Pursuant to the provisions of 37 CFR 1.193(b)(1) Applicant/Appellants wish to
address several points raised by the Examiner in the Examiner's Answer.

(1)

Applicants/Appellants position regarding the combination of the Lütke et al. and
Feese has been developed in their brief-in-chief. Regarding the combination of Lütke and Feese,
the Examiner states in his Examiner's Answer, on page 4 thereof, that "[t]he motivation to
combine Lütke with Feese is in order to obtain an advantageous high strength conductor for use
with the Lütke device utilizing the conductor waveguide produced by the SZ-twisted elements
disclosed in Feese." The basis for what the Examiner characterizes as the "motivation to
combine Lütke with Feese's is preceding page 4 of the Examiner's Answer with the following

two statements “[t]here are many types of transmission lines, such as waveguides, that may be used, which are well known. There are also many types of waveguides used that are well known to one of ordinary skill in the art.” Apparently, these statements form the basis for the conclusion that there is a “motivation to combine Lütke with Feese--” If this is so, it is respectfully submitted, that it is deficient as a basis for the conclusion. The motivation for combining references should derive from the references themselves. See *In re Gordon*, 221 USPQ 1125 (Fed. Cir. 1984). What could be done with the references is not the issue, what is the issue is what do the references suggest. See also, *In re Oetiker*, 24 USPQ2d 1443 (Fed. Cir. 1991), which instructs us that the knowledge for making a combination “cannot come from the Applicants invention itself.”

The “motivation” for the claimed invention can be found in the background section of the present application which discusses the advantages and disadvantages of using metal rods or tubes as waveguides as well as using bare wire cables or plastic-coated wire cables as waveguides. The applied references, if they are to be combined, should at least discuss the same problem discussed in the present application; then, perhaps, the “motivation” statement found on page 4 of the Examiner’s Answer could have significance. There then would be linkage, and without such a linkage the “motivation” statement should carry no weight under 35 USC 103.

(2)

Again with regard to the combination of Lütke et al. and Bachmann et al the Examiner, on page 5 of the Examiner’s Answer repeats the “motivation” statement. Here, as in

the combination of Lütke et al. and Feese, the statement is conclusory and should carry no weight. In addition, regarding Bachmann, the Examiner states, also on page 5 of the Examiner's Answer, that "[t]he specifics to the majority of the claims are disclosed in column 2 lines 10-31." A careful reading of column 2, lines 10-31 of Bachmann et al. does not mention in any way the following limitation found in claim 21, namely, "a waveguide which comprises a plurality of pieces which are connected to one another via at least one flexible intermediate piece." Accordingly, it is respectfully submitted that the "specifics" are not disclosed in column 2, lines 10-31 as suggested by the Examiner.

(3)

On page 4 of the brief-in-chief Applicants/Appellants stated:

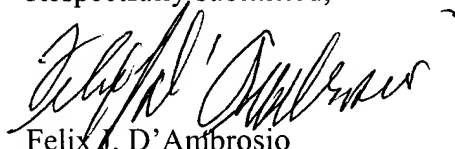
--If the Examiner is applying Feese because in the Examiner's view Feese teaches 'the limitations of the claimed wire configuration' and the claimed wire configuration states that it comprises 'a plurality of individual wires of a pre-determined diameter which are twisted together,' then Feese must teach the 'twisted together' feature. And, if it does not, then, Apriori, the Examiner is assuming the teaching.

To this statement the Examiner notes on page 6 of the Examiner's Answer "[t]his argument is confusing and contradictory. The Feese reference teaches wires 'twisted together' as evidence from the title of the reference." It is respectfully submitted that Applicants/Appellants argument noted above is neither "confusing" or "contradictory." Feese teaches twisting wire about its own axis, whereas, according to the present invention the rods are not twisted about their own axis but about the axis of the cable. There is a difference, and Feese does not teach the difference.

(4)

Again regarding Bachmann et al., the Examiner repeats that Bachmann et al. teaches the “flexible intermediate piece” of the invention. A comparison of figure 4 of the present application and the figures shown in Bachmann et al. as well as the disclosure in column 2, lines 10-31 of Bachmann et al. should clearly indicate that what is claimed in claims 21-31 and what is disclosed in Bachmann et al. are not the same and not obvious variations thereof.

Respectfully submitted,



Felix J. D'Ambrosio
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January 14, 2004

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES



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For: APPARATUS FOR DETERMINING AND/OR)
MONITORING THE FILLING LEVEL.....)

REPLY BRIEF ON APPEAL (3 COPIES)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Transmitted herewith are three (3) copies of a Reply to Examiner's Answer Brief on

Appeal in the above-identified application.

1. ☒ An Oral Hearing is requested.
2. ☐ An Oral Hearing was requested on _____.
3. ☐ An extension of time for filing the Brief on Appeal
 ☐ is hereby requested.
 ☐ was requested on _____.
4. ☐ A Verified Statement under 37 CFR 1.9 and 1.27
 ☐ is enclosed.
 ☐ is of record in this application.

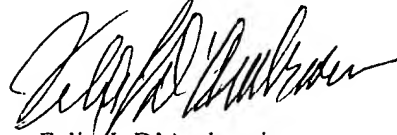
The fee is calculated as follows:

	Large Entity	Small Entity	Amount
Filing Brief on Appeal	\$330.00	\$165.00	
Request for Oral Hearing	\$290.00	\$145.00	\$290.00
Request for Extension of Time for Filing Brief			
<input type="checkbox"/> 1 month	110.00	55.00	
<input type="checkbox"/> 2 months	420.00	210.00	
<input type="checkbox"/> 3 months	950.00	475.00	
<input type="checkbox"/> 4 months	1,480.00	740.00	
<input type="checkbox"/> 5 months	2,010.00	1,005.00	

TOTAL DUE \$ 290.00

6. (X) A check in the amount of \$ 290.00 is enclosed (check # 38729)
7. () Please charge Deposit Account No. in the amount of \$ _____. A duplicate of this sheet is enclosed.

Respectfully submitted,



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January 14, 2004

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